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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

NO. 696

THILLENS, INC., a corporation, *Appellant*,

vs.

LLOYD MOREY, Auditor of Public Accounts of the State of Illinois; **LATHAM CASTLE**, Attorney General of the State of Illinois; **JOHN GUTKNECHT**, State's Attorney of Cook County, Illinois, *Appellees*,

and

HAROLD A. ARNOLD, doing business as **LAKEVIEW CURRENCY EXCHANGE**; **RALPH BARR** and **LOUIS WOLFBERG**, copartners doing business as **MARSHALL SQUARE CURRENCY EXCHANGE**; **JOHN F. BOGIE**, doing business as **RAVENSWOOD CURRENCY EXCHANGE**; and **SIDNEY SORKIN**, doing business as **CERTIFIED CURRENCY EXCHANGE**, *Appellees*.

APPEAL FROM SUPREME COURT OF ILLINOIS.

MOTION OF APPELLEES, HAROLD A. ARNOLD, etc.; RALPH BARR and LOUIS WOLFBERG, etc.; JOHN F. BOGIE, etc.; and SIDNEY SORKIN, etc., TO DISMISS OR AFFIRM.

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Appellees, Harold A. Arnold, etc.; Ralph Barr and Louis Wolfberg, etc.; John F. Bogie, etc.; and Sidney Sorkin, etc., pursuant to Rule 16 of the Revised Rules of this Court, move that the appeal be dismissed on the ground that it does not present a substantial federal question, or in the alternative, that the judgment of the Supreme Court of Illinois be affirmed, on the ground that the questions on which the decision of the cause depends, are so unsubstantial as not to need further argument.

STATEMENT.

Contrary to Rule 15, appellant failed to set forth or attach a copy of the Amendatory Act of 1951, which is challenged here, or to state the questions presented by its appeal "in the terms and circumstances of the case."

What appellant has attached as a "copy of Statute here involved," (pp. 42a-67a of its jurisdictional statement) is a copy of the entire Currency Exchange Statute as it was in 1951. We have attached hereto as an appendix the Amendatory Act of 1951, which is the only Act in issue here.

By reason of the broad and unlimited statement of the questions presented under (1) (Jurisdictional Statement p. 4), it asks the Court to pass upon "the manifold provisions of a broad statute in advance of efforts to apply the separate provisions." The Court has steadfastly refused such an invitation. *Watson* v. *Buck*, 313 U. S. 387, 402; *Electric Bond Co.* v. *Comm.*, 303 U. S. 419, 443.

It should also be noted that in House Bill No. 1031 (appellant's appendix, pp. 40a, 41a) enacted 1957, the validity of which is not in question here, the words "American Express Company money orders" were eliminated. (Vol. I, Ill. Rev. Stat. 1957, Ch. 16½, Par. 31, P. 278).

The history of the Amendatory Act of 1951, and its background, are relevant here.

As early as 1931, there was at least one community currency exchange in Chicago, and in 1932 there was a large number of them on Chicago's South Side. One of the

community exchanges on Chicago's North Side was operated in 1932 by Melvin G. Thillens. In 1934, he commenced also his business of cashing payroll checks on the premises of industrial plants and commercial establishments, and on the public streets in front of or near such plants and establishments, with the assistance of an armored truck. Both businesses occupied the same office, and still do, although in 1949, the armored service was incorporated as Thillens, Inc., appellant herein. His community exchange was licensed under the 1943 Currency Exchange Statute; the armored service never applied for such a license.

The 1943 Currency Exchange Statute contemplated a comprehensive licensing and regulatory plan covering the whole field of check cashing and money order operations. Sec. 1 defined a community currency exchange as any person etc., with certain exceptions, engaged in the business of cashing checks or selling money orders, or both, or either. *McDougall* v. *Lueder*, 389 Ill. 141, 144. An armored car check cashing service seemingly came within the express language of the definition. The State Supreme Court seemingly so held, when a consolidated attack upon the constitutionality of the Act made by an armored car service as well as by a community exchange, was overruled. *McDougall* v. *Lueder*, 389 Ill. 141, 145.

Consequently, the State's Attorney General, under the belief that Thillens' armored car service should not operate, inasmuch as a competitor was so prohibited by that decision, filed an injunction proceeding to restrain Thillens from operating his armored car service. The complaint did not allege that the business was dangerous; and the lower court entered judgment *on the pleadings* in favor of the State.

The trial court permitted Thillens to introduce evidence that his armored car business was not dangerous, but use-

ful and desirable, on the question of whether his appeal should operate as a supersedeas. The State saw no necessity to contradict the evidence.

The State Supreme Court held, on the basis of Thillens' uncontradicted allegations and proofs, that nothing had been alleged or shown which rendered his armored car business dangerous, and subject to the requirements of the Act. It emphasized that he operated only under contract with the employers. The Court adhered to its decision in the *McDougall* case, except that "in the present case the issue is whether the legislature intended to, and whether it had the power to, *prohibit entirely* mobile service offered by appellant as a matter of private contract between himself and the employer of workmen." *People* v. *Thillens*, 400 Ill. 224, 236. (Italics ours.)

We interpolate here that in the case at bar, appellant was unable to prove any contracts between it and the employers, or even the workmen, for the service. (Abst. 653, 658-663; Rec. 2180, 2198-2232). It advertised it required no contract, and it never costs the employer anything. (Int. Defs'. Exs. 17, 12, 14; Abst. 259, 255, 256, 257; Rec. 893, 879, 880, 883-887). A great deal of appellant's advertising matter was distributed to the public by mail; handbills; and street car media. Workmen were paid cash to bring in new business. One of its circulars importuned the public that it "saves employees money by making it unnecessary to cash checks where high rates are charged," probably having reference to the community exchanges. (Int. Defs.' Exs. 10, 11, 12, 13, 14, 15, 16, 17; Abst. 228, 229, 255-259; Rec. 700-705, 872-893.) As an added attraction, appellant cashed any other checks that the workmen might present beside payroll checks. (Abst. 211, 234; Rec. 621, 723).

Thus, when *People* v. *Thillens* was decided by the State Supreme Court, it became clear that the 1943 Act was but a mirage for the distressed community exchanges which alone were subjected to the high costs of regulation, and that it placed in the hands of the armored car services a sword of tremendous advantage with which to cut down their competition.

Freed from regulation, appellant was enabled to so seriously underprice the community exchanges, which are prohibited from engaging in business except at a fixed and permanent place of business (Sec. 10), that while appellant's business grew from nothing in 1934 to a volume of 3,800,000 checks ($235,000,000) in 1951, to 4,800,000 checks ($330,000,000) in 1954, the check cashing operations of the community exchanges slumped badly, although at the same time, the volume of checks in circulation in the Chicago area rose sharply, and the money order business of the community exchanges forged ahead. (Abst. 110, 455-457; Rec. 186, 187, 1729-1737). In 1953, appellant cashed almost one-third as many checks as those cashed by 488 community exchanges altogether. (Abst. 110, 457, 461, 603; Rec. 187, 1737, 1757, 1941).

As of July 1, 1951, there were 576 licensed community exchanges in the metropolitan Chicago area, and only 15 downstate. Appellant operates only in that Chicago area, and in substantially the same localities as those serviced by the community exchanges.

Four exchange operators testified that their check cashing activities were almost paralyzed when appellant moved in. One of them reduced his rates to meet appellant's. When he tried to raise his rates back again, he lost out to appellant. (Abst. 607, 610, 430-432, 622, 623, 379-381, 331-336, 347-349; Rec. 1957-1960, 1984, 1582-1589, 2041-2046, 1333-1334, 1046-1069, 1165-1175).

Payroll check cashing is the cream of the business, because there is no risk of forgery, and the operation requires a minimum of time and effort.

It would seem almost simple justice that businesses directly competing with each other and requiring in the reasonable judgment of the legislature regulatory measures, ought both to be burdened by regulation, instead of imposing the whole brunt of regulation on one segment, and giving the other the seal of approval; and that principle three legislatures and three State Auditors of different political faiths strove to effectuate in legislation.

So strong was the sentiment in the legislature anent Governor Stevenson's 1949 veto, that in 1951, Governor Stevenson in his message said:

> "Inasmuch as the legislature has for the second consecutive time, and by an overwhelming vote, concluded that the proposed regulation is in the public interest, I have no disposition to interfere further." Jurisdictional Statement, p. 71a.

It is not novel doctrine that the State may adjust competitive or economic inequalities, if it is in the public interest so to do, particularly where the inequalities have their roots in the statutory discrimination. *Slaughter House* Cases, 83 U. S. (16 Wall.) 36; *Atl. & Pac. Tea Co.* v. *Grosjean*, 301 U. S. 412, 425-427; *Nebbia* v. *New York*, 291 U. S. 502, 538; *Fed. Communications Com.* v. *R.C.A. Comm. Inc.*, 346 U. S. 86, 91, 92; dissenting opinion of Mr. Justice Frankfurter, *Hood* v. *Du Mond*, 336 U. S. 525, 566; *Trade Comm.* v. *Morton Salt Co.*, 334 U. S. 37, 49.

> "The state legislatures * * * are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field so long as specific constitutional prohibitions are not violated * * *." *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 423.

ARGUMENT.

I.

The principle contention of appellant is that its business is not dangerous, although the legislature and a majority of the Illinois Supreme Court found otherwise. The detailed findings of that Court are found in 11 Ill. (2) 579, at 591, 592, and will not be repeated here. Jurisdictional Statement, pp. 31a, 31b.

The evil in that regard aimed at by the Amendatory Act was the check cashing operation inside a plant or establishment, where not done from within an armored truck, and the conduct of appellant's check cashing operations on the public streets. It was not aimed at the transportation of currency, because that operation in armored vehicles is relatively more safe from criminal attack, although on one occasion the Touhy gang blasted through one of appellant's armored vehicles with high powered rifles, and took a large sum of money. (Abst. 231, 247; Rec. 714, 829).

Checks are cashed at a central station inside the plant or establishment at approximately two-thirds of appellant's stops. At only 20 plants, bullet proof cages have been installed for check cashing, some by the employers themselves. The inside check cashing stations are located in the plant lunchrooms, corridors, or other large rooms where large numbers of workers gather and form in lines. Speed is of the essence, because then the operations are more profitable. These stations are unprotected by any physical equipment from criminal attack against appellant's armed cashier, who while engaged in cashing checks on a time schedule, cannot maintain proper vigilance and guard.

Appellant's armored vehicles carry as much as $300,000 on a single trip. Checks are cashed at locations with as many as 2,000 workers.

At holdups that occurred to appellant, large numbers of workers were terrorized by armed bandits brandishing sawed-off shotguns and tommy guns, and its personnel were pistol whipped and shot. One of the workers had her money robbed from her. Another fainted. Had a false move been made by any of the workers, a wholesale massacre could easily have occurred. (Abst. 231, 232, 233, 247, 248, 337-339, 309-314, 318-322, 341, 342, 345-347; Rec. 714, 715, 716, 718, 719, 978-996, 998-1012, 1081-1106, 1116-1124). At holdups that occurred to Brinks, men were killed. (Abst. 137; Rec. 288, 289).

Sec. 19.1 of the Amendatory Act required an ambulatory Exchange to provide an armed guard, in addition to the cashier, when engaged in check cashing on a licensed location other than from within an armored vehicle.

The State Supreme Court has twice taken judicial notice of the crime conditions peculiar to the Chicago area.

> "This investigation would doubtless reveal congestion in travel, both pedestrian and vehicular, causing an uncommon number of automobile accidents; blight and slum areas; areas of unassimilated foreign elements where crimes are bred and protection is offered fleeing criminals; skid rows where poverty, crime and general disrespect for the law abounds; narcotic rings, hoodlums, gangsters and racketeers that kill with sawed-off shotguns, *all of which pose problems on Chicago that are not found in other parts of Illinois.*" *Gaca* v. *City of Chicago*, 411 Ill. 146, 155; *DuBois* v. *Gibbons*, 2 Ill. (2) 392, 402, 403. (Italics ours).

Appellant, by its own sworn statements and testimony, has foreclosed itself from now contradicting the dangerous

nature of its check cashing operations inside a plant or establishment.

Appellant's sworn reply denied that it failed to provide armed guards where necessary to the protection of property or persons dealing with it. (Abst. 53, 54; Rec. 83). When required by written interrogatory to state when and under what circumstances it was necessary to provide an armed guard in addition to its cashier, it answered under oath:

> "Plaintiff provides an armed guard at every location served by plaintiff where checks are cashed inside a manufacturing plant where the amount of currency carried by the cashier exceeds $3,000." (Abst. 252; Rec. 836).

In answer to another interrogatory, it answered that out of 1240 stops, armed guards are provided, in addition to an armed cashier, at approximately 830 stops. (Abst. 252; Rec. 836).

Thillens personally testified that whenever they had sufficient manpower, an armed guard would accompany the cashier regardless of the amount involved. (Abst. 221; Rec. 676).

However, it was conceded that at several of the holdups where more than $3,000 was to be distributed, no armed guard was provided, and it was found by the trial and Supreme Courts that appellant generally did not provide an armed guard, other than the cashier, when cashing checks in plants. *Thillens, Inc.* v. *Morey,* 11 Ill. (2) 579, 591, 592; Jurisdictional Statement p. 31a.

Plaintiff's Exhibit 36 is appellant's instruction sheet issued to its personnel. It recites that it is the "*required* safety procedure to be followed by guards and cashiers

on stops, where money is exposed outside or *inside* the plant." Upon leaving the truck, the guard is required to have his gun drawn, and never leave the cashier out of sight. The cashier is required to push the money cart with one hand, and hold his gun in his other hand. *Inside* the plant, the cashier is required always to be fifteen feet in front of the guard, and the guard is required to "have his hand on gun butt, prepared to draw at any time." (Abst. 244; Rec. 813) (Italics ours).

Thus the existence of the danger, and the need for armed guards, did not end at the plant entrance as experience had shown and appellant *well knows;* and that is what the Amendatory Act sought to regulate. It made obligatory upon appellant what the latter, although it practiced it irregularly, considered as *necessary* safety procedure.

Brinks' vice-president, called by appellant, testified to the same evil and the same need of at least one armed guard at every point of check cashing activity. (Abst. 141, 142; Rec. 303, 306, 307).

The requisites of due process were therefore clearly established.

> "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 488.
>
> "We cannot say that South Carolina is not entitled to call the funeral insurance business an evil. Nor can we say that the statute has no relation to the elimination of those evils. There our inquiry must stop." *Daniel* v. *Family Security L. Ins. Co.*, 336 U. S. 220, 224.
>
> "We do not sit to weigh evidence on the due process issue in order to determine whether the regulation is sound or appropriate; nor is it our function to pass judgment on its wisdom. * * * It is the judgment of the

local authorities that it does have such a relation, and nothing has been advanced which shows that to be palpably false." *Railway Express Agency* v. *New York*, 336 U. S. 106, 109.

Before we leave Sec. 19.1 of the Amendatory Act, it should be noted that it does not require the armed guard to be in the employ of, or compensated by, the ambulatory exchange. An armed police officer, or an armed plant guard, would be sufficient.

Sec. 19.2 required a $2,000 surety bond with each application for a location license, conditioned that the applicant shall comply with Sec. 19.1, and pay all "lawful" claims for money or property loss, or bodily injury, suffered in the course and by reason of a holdup at a location *that shall occur at the time or times when the applicant failed to comply with Sec.* 19.1. The applicant may file a blanket bond covering all licensed locations in a penal sum not to exceed $100,000, conditioned as aforesaid, but limiting the liability to $2,000 for each location.

The premium on such a bond for $100,000 is $1,000 annually. (Abst. 372; Rec. 1298)

Sec. 28 provided that unless an ambulatory exchange shall engage in the sale of money orders, Secs. 5, 6 and 7, which require of community exchanges a performance bond, insurance against various kinds of losses, and a minimum amount of liquid funds on hand, shall not be applicable to it.

Sec. 2 provided that no license shall be issued for the conduct of an ambulatory exchange on any public street or highway. Appellant, in answer to written interrogatories, admitted cashing checks on public streets and highways. (Abst. 250; Rec. 839). Thillens testified likewise. (Abst. 221; Rec. 675). Appellant's advertising matter and

letterheads showed the same. (Int. Defs.' Exs. 11, 12, 13, 14, 18, 18a; 21; Abst. 255-260; Rec. 876, 879, 882, 884, 898). It has been held many times that the State has supreme control of its streets and highways, and that when one uses them to carry on private enterprise for his own gain, his use may be withdrawn at any time. *Bode* v. *Barrett*, 412 Ill. 204, 219, aff'd. 344 U. S. 583; *People* v. *City of Chicago*, 415 Ill. 165, 167-169; *Hodge etc. Co.* v. *Cincinnati*, 284 U. S. 335, 337.

This practice of dispensing large sums of money on the streets wherever appellant saw fit to go, was not only a dangerous practice, as evidenced by the criminal attack made by the Touhy gang on appellant's armored vehicle, but a traffic hazard, and another facet of the unfair competition waged against the community exchanges.

Secs. 4 and 10 require of ambulatory as well as community exchanges a showing of applicant's character and fitness. Although appellant cannot complain thereof because it has not shown that it was aggrieved thereby, we would point out that an ambulatory exchange, when it gains access to plants and establishments, many of them engaged in government work, is in a trusted position; and its armed personnel are in a position to commit violence. No employer would knowingly afford access to men of shady or criminal records, or to ambulatory exchange operators who could not respond financially for the unlawful acts of its personnel. Appellant recognized this risk by screening and training its armed personnel, and subjecting them to lie detector tests (Abst. 149; Rec. 329, 330), and by obtaining insurance. (Abst. 253, 254; Rec. 840-870).

Appellant's assertion in this connection that the Amendatory Act fails to state the conditions upon which the Auditor may issue, deny or revoke a license, although ap-

pellant has not shown that it has been aggrieved thereby, is inconsistent with Secs. 4, 10 and 15. Secs. 22.01 and 22.02 provide for review of the Auditor's action by the Circuit and Supreme Courts. A similar contention was overruled in *McDougall* v. *Lueder*, 389 Ill. 141, 155.

Sec. 4 also requires a sworn statement of consent from employers whose workers are to be served by an ambulatory exchange. This is a reasonable administrative regulation which would resolve controversies between applicants without the expense of a hearing. Otherwise, an applicant could tie up any number of locations unbeknown to the employers there. The requirement is analogous to provisions for frontage consents for gas filling stations, billboards, public garages, and zoning variations.

Sec. 4 also requires a fee of $25 to cover the cost of investigating the applicant, which is not payable more than once. That is not a license fee. The only license fee paid by an ambulatory exchange is $10 annually for each location (*i.e.* plant or establishment) served by it. Such licenses are issued to applicants approved by the State Auditor as to character and fitness, who file the required employers' consents.

Sec. 16 of the 1943 Act relating to reports and examinations was amended to include ambulatory exchanges, so that the requirements were applicable to all exchanges. Inasmuch as appellant does not engage in the money order business, it would naturally be called upon for considerably less information and examination. Neither this section nor any other section, calls for a "plethora" of reports, or records, or fees, or charges. Under Sec. 16, the only fee charged is when the Auditor examines witnesses under oath; and in the case of ambulatory exchanges, it is not increased by reason of the number of its locations.

Appellant's evidence showed that as of 1951, it served 650 locations, and cashed about 4 million checks averaging $58 to $60 each, for a fee of 20¢ each check. The record shows that the annual cost of regulation based on those figures would run about $7,500, which is less than 1% of appellant's gross income, and exceedingly little indeed, when compared with the considerably higher regulatory costs imposed upon the community exchanges.

The foregoing are in essence the regulations imposed upon appellant. This is what appellant claims will accomplish "the very destruction of Thillens' business" and leave to the community exchanges a "monopoly of the entire payroll check cashing business." Jurisdictional Statement, pp. 15, 16.

In order to show the undesirability of this legislation, appellant has stepped outside the record to accuse the community exchanges of lobbying, and attempting to drive Thillens out of business, and of being "actively involved" in *Morey* v. *Doud*, 354 U. S. 457. A strikingly similar attack was made upon the "insurance lobby" in *Daniel* v. *Family Security L. Ins. Co.*, 336 U. S. 220, 224, where the District Court expressly found that the legislation there was "designed to, and will destroy" the plaintiff, and that it "had its genesis in the desire of the existing insurance companies to eliminate the plaintiff company as a competitor." This Court, in overruling that contention, unanimously said:

> "Looking through the form of this plea to its essential basis, we cannot fail to recognize it as an argument for invalidity, because this Court disagrees with the desirability of the legislation. We rehearse the obvious when we say that our function is thus misconceived. • • • The forum for the correction of ill-considered legislation is a responsive legislature."

II.

Appellant claims that the legislation is discriminatory because "the complaint alleged, the evidence established, and both the trial court and the Supreme Court found that appellant is the only operator of a payroll check cashing service in Cook County," etc. (Jurisdictional Statement, p. 15). This assertion is unsupported by the record.

The Supreme Court of Illinois did not so find in the case at bar.

The trial court found there were two others engaged in that business (Abst. 77; Rec. 123). Appellant's complaint alleged there were two others, besides Brinks, which it alleged was engaged in isolated transactions. (Abst. 2, Rec. 5). The undisputed evidence showed that Brinks was regularly engaged therein since 1939. (Abst. 139, 140; Rec. 292, 293, 296, 297). No evidence was introduced by appellant to show that the businesses of the other two were or were not of substantial size.

(Parenthetically, there are a number of incorrect statements in the Jurisdictional Statement. We would point out also that its Appendix D, which is wholly irrelevant to this case, does not correctly set forth the language of that statutory amendment. (Vol. 1, Ill. Rev. Stat. 1957, Ch. 16½, Par. 34.3, P. 280). Elaboration on all the inaccuracies would prolong this argument unduly.)

The contention that appellant was the only business materially affected by the Act, was likewise made and overruled in *Daniel* v. *Family Security L. Ins. Co.*, 336 U.S. 220, 225, footnote 5, where the Court said:

> "That respondent company is the only concern now affected by the statute does not, of course, mean a denial of equal protection. The statute is drawn in general terms; the company's success might will induce others to enter the business."

In the *Daniel* case, the plaintiff was put out of business by the statute. That is not the fact here.

Appellant claims that Sec. 1 is discriminatory, because of what it refers to as "the Brinks exception" (p. 9), although at p. 14, it concedes that said exemption can apply to Brinks "and the few others engaged in armored car transport." The record does not disclose how many others there are.

The State Supreme Court adequately disposed of this contention. *Thillens, Inc.* v. *Morey*, 11 Ill. (2) 579, 595. The carrier excepted by Sec. 1 is only the servant of the employer, and it is the employer who is actually cashing the checks with his own money. Sec. 1 excepts those engaged in the transportation of money etc. who "only as an *incident* thereto, cashes checks" etc., *"with the funds of and at a cost only to"* the *employer* pursuant to written contract.

The legislature had the right to believe that the employer in such a case would exercise greater care for the safety of his own property and of his employees than he would where the funds do not belong to him, but to an ambulatory exchange, and that the employer did not contribute to the evil to the same degree that an ambulatory exchange does, servicing regularly hundreds of concerns. Classification according to occupations has always been considered reasonable and proper; and it was not necessary to bring every employer in Illinois under the Act in order to regulate the ambulatory exchanges. *Semler* v. *Oregon State Bd.*, 294 U.S. 608, 610.

There is no closed class involved here, and there is nothing to prevent appellant from coming within the exception if it chooses to change the nature of its operations. "The fact that New York City sees fit to eliminate from traffic

this kind of distraction, but does not touch *what may be even greater ones in a different category* * * * is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Railway Express Agency* v. *New York*, 336 U.S. 106, 110. (Italics ours).

It should not be understood from the foregoing that Brinks, as to its ambulatory exchange operations, is exempted from the Amendatory Act of 1951. As to those operations, which are substantial as above indicated, it is subject to the Act, and Brinks does not claim otherwise.

Nor is there merit in appellant's contention that it is discriminated against because the community exchanges are not required to provide guards. If, as appellant contends, the two businesses are "completely different" (Jurisdictional Statement, p. 17), then they are not comparably situated. The uncontradicted evidence showed that every community exchange is protected by specially constructed bullet proof armored cage equipment and bullet proof cage glass. (Abst. 370, 371; Rec. 1292-1295). They would be unable to secure the insurance required by Sec. 5 and 6 of the Act without such equipment (Abst. 397; Rec. 1420); and without such insurance, they could not be licensed under the Act. They are about as well fortified as an armored vehicle, which requires no license under the Amendatory Act. They are small places of business, often 10x25 feet in width, and 10x25 feet in depth. (Abst. 433; Rec. 1593); and few customers congregate there at one time. The holdups that occurred there happened when no customers were present. (Abst. 374; Rec. 1309, 1310). It is not correct, as appellant says with reference to community exchanges "that in some instances, there has been serious injury to members of the public," or that

appellees' witnesses so testified. Jurisdictional Statement, p. 20. That is unsupported by the record. (Abst. 374; Rec. 1309-1311)

Certainly the foregoing does not add up to invidious discrimination.

III.

Appellant's final contention is that *Morey* v. *Doud*, 354 U. S. 457, invalidated the whole Act, even as to appellant, who is not engaged in the money order business and not comparably situated with American Express Co., and not discriminated against, because of the exemption of American Express Co.

Appellant never alleged or made the contention that it was discriminated against by the American Express exemption until after it filed its petition for rehearing in the State Supreme Court, and therefore waived the point, if it was ever available to it.

This Court did not say in *Morey* v. *Doud*, that the whole Act was void as to everybody, including those not discriminated against. It is elementary that before one may be heard to strike down state legislation because of repugnancy to the 14th Amendment, he must bring himself within the class affected by the unconstitutional feature. *Arkadelphia Co.* v. *St. Louis Ry. Co.*, 249 U.S. 134, 149; *National Union* v. *Arnold*, 348 U.S. 37, 41. We repeat, appellant never was, and is not now, engaged in the money order business, and could not be aggrieved by the American Express exemption.

This Court in *Morey* v. *Doud* affirmed a decree of the District Court which enjoined enforcement of the Act against the plaintiffs there "so long as they engaged only in the business of issuing and selling money orders." This

proviso would be meaningless if the Court's intention was to void the whole Act.

In *Morey* v. *Doud*, 354 U.S. 457, 476, footnote 16, the Court said that the judgment of the Illinois Supreme Court on the question of severability was binding on this Court.

The Supreme Court of Illinois has now decided that the exemption of American Express money orders was severable. *Thillens, Inc.* v. *Morey*, 11 Ill. (2) 579, 596, 597; Jurisdictional Statement, pp. 35a, 36a.

IV.

There are other principles applicable here, which we shall advert to without argument.

1. Inasmuch as the State could take the whole check cashing business under its control, it may permit others to engage in it upon such conditions as it may prescribe. *Noble State Bank* v. *Haskell*, 219 U.S. 104, 113; *California Auto. Assoc.* v. *Maloney*, 341 U.S. 105, 110; *Osborn* v. *Ozlin*, 310 U.S. 53, 66; *Daniel* v. *Family Security L. Ins. Co.*, 336 U.S. 220, 224, footnote 4; dissenting opinion of Mr. Justice Frankfurter and Mr. Justice Harlan, *Morey* v. *Doud*, 354 U.S. 457, 472.

2. The philosophy of the *Allgeyer, Adams, Lochner, Coppage* and *Adkins* cases has been repudiated, and this Court leaves debatable issues as respects business affairs to legislative decision. State legislatures are no longer put in a strait jacket when they attempt to suppress business conditions, which they regard as offensive to the public welfare, so long as their laws do not run afoul of some *specific* federal constitutional prohibition, or of some valid federal law. *Lincoln Fed L. U.* v. *Northwestern I. & M. Co.*, 335 U.S. 525, 536; *Day-Brite Lighting, Inc.* v. *Missouri*,

342 U.S. 421, 425; *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488; dissenting opinion of Mr. Justice Black, *Morey* v. *Doud*, 354 U.S. 457, 470.

3. Since as early as at least 1934, the words "unreasonable" and "arbitrary" do not have the same content as is ascribed to them by appellant. *Daniel* v. *Family Security L. Ins. Co.*, 336 U.S. 220, 225.

CONCLUSION.

The questions presented here are without substance, and the motion to dismiss or affirm should be granted.

Respectfully submitted,

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APPENDIX.

Amendatory Act of 1951.

(N.B.—Italicized words were added and underscored words in brackets were subtracted.)

An Act to amend Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 and the title of "An Act in relation to the regulation of community currency exchanges, and the operators and employees thereof, and to make an appropriation therefor", approved June 30, 1943, as amended, and to add Sections .01, 19.1, 19.2, 28, 29 and 30 thereto.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 of "An Act in relation to the regulation of community currency exchanges, and the operators and employees thereof, and to make an appropriation therefor", approved June 30, 1943, as amended, are amended, and Sections .01, 19.1, 19.2, 28, 29 and 30 are added thereto, the amended and added sections to read as follows:

Sec. .01. The General Assembly has found and declares:

that the community currency exchange business, as hereinafter defined in Section 1, has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act.

Sec. 1. For the purposes of this Act:

"Community currency exchange" means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged *at a fixed and permanent place of business,* in the

business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money order, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services; at any location other than that of a fixed and permanent place of business of his, their or its own.

"Auditor" means the Auditor of Public Accounts.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value and who [only] in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to, the person, firm, association partnership, or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels, or other property of great monetary

value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, [only] in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

Sec. 2. No person, firm, association, partnership or corporation shall engage in the business of a community currency exchange *or in the business of an ambulatory currency exchange* without first securing a license to do so from the Auditor.

Any person, firm, association, partnership or corporation issued a license *to do so* by the Auditor shall have authority to operate a community currency exchange *or an ambulatory currency exchange*, as defined in Section 1 hereof.

No license shall be issued for the conduct of an ambulatory currency exchange on any public street or highway. An ambulatory currency exchange shall be required to and shall secure a license or licenses for the conduct of its business at each and every location served by it, as provided in Section 4 hereof. No license issued for the conduct of its business at one location shall authorize the conduct of its business at any other location.

Any person, firm, association, partnership or corporation that violates this section [is guilty of a misdemeanor and, upon conviction thereof,] shall be fined not less than $500.00 nor more than $1000.00 or imprisoned in the county jail for not more than [(1)] year, or [may be] both [so fined and imprisoned], and the Attorney General or the State's Attorney of the county in which the violation occurs shall file a complaint in the Circuit Court of the county to restrain the violation.

Sec. 3. No community *or ambulatory* currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community *or ambulatory* currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof, and deliver such money or proceeds of evidence of money upon request and direction of such owner or owners; provided, that nothing contained herein shall prevent a community *or an ambulatory* currency exchange from obtaining state automobile and city vehicle licenses for a fee or service charge, or from rendering a photostat service, or from rendering a notary service either by the proprietor of the currency exchange or any one of its employees, authorized by the State of Illinois to act as a notary public, or from selling travelers cheques obtained *by* the currency exchange from a banking institution under a trust receipt, or from issuing money orders or from accepting for payment local utility bills; provided, further, that in accepting any such payment the community *or ambulatory* currency exchange shall not be deemed to act as agent for the local utility, nor shall such community *or ambulatory* currency exchange be authorized to receipt for such payment in the name, or on behalf, of such utility.

Sec. 4. Application for such license shall be in writing under oath and in the form prescribed and furnished by the Auditor. Each application shall contain the following:

(a) The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof, and the name and business address if the applicant is a corporation;

(b) The county and municipality, with street and number, if any, where the community currency exchange is to be conducted, *if the application is for a community currency exchange license;* [and]

(c) If the application is for an ambulatory currency exchange license, the names and addresses of the plants or businesses at the location or locations to be served by it; and

[(e)] *(d)* The applicant's occupation or profession; a detailed statement of his business experience for the ten years immediately preceding his application; a detailed statement of his finances; his present or previous connection with any other [community] currency exchange; whether he has ever been involved in any civil or criminal litigation, and the material facts pertaining thereto; whether he has ever been committed to any penal institution or admitted to an institution for the care and treatment of mentally ill persons; and the nature of applicant's occupancy of the premises to be licensed *where the application is for a community currency exchange license. If the applicant is a partnership, the information specified herein shall be required of each partner. If the applicant is a corporation, the said information shall be required of each officer and director thereof.*

Such application shall be accompanied by a fee of [twenty-five dollars ($25.00)] *$25.00* which fee shall be for the cost of investigating the applicant. When the application *for a community currency exchange license* has been approved by the Auditor and the applicant so advised; an additional sum of [fifty dollars ($50.00)] *$50.00* as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Auditor by the applicant; provided, that the license fee for an appli-

cant applying for *such* a license after July 1st of any year shall be ~~[twenty-five dollars ($25.00)]~~ *$25.00* for the balance of such year.

When the application for an ambulatory currency exchange license has been approved by the Auditor, and such applicant so advised, such applicant shall pay an annual license fee of $10.00 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such license after July 1st of any year shall be $5.00 for the balance of such year for each and every location to be served by such applicant. An approved applicant shall not be required to pay the initial investigation fee of $25.00 more than once. Such an approved applicant, when applying for a license with respect to a particular location, shall file with the Auditor, at the time of filing an application, a letter or memorandum, which shall be in writing and under oath, signed by the owner or authorized representative of the place of business where service is to be rendered; such letter or memorandum shall contain a statement that such service is desired, and that the person signing the same is authorized so to do.

Sec. 8. A community *or an ambulatory* currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community *or an ambulatory* currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises; provided, further, that no community currency exchange hereafter licensed for the first

time shall share any room with any other business, trade or profession nor shall it occupy any room from which there is direct access to a room occupied by any other business, trade or profession.

Sec. 9. No community *or ambulatory* currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

Sec. 10. The applicant, and its [members,] officers and directors, if a corporation, shall be vouched for by two reputable citizens of this State setting forth that the individual mentioned is (a) personally known to them to be trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own or become associated with a [community] currency exchange, (c) that he has a good business reputation and is worthy of a license. Thereafter, the Auditor shall, upon approval of the application filed with him, issue to the applicant qualifying [hereunder] *under this Act,* a license to operate a [community] currency exchange [at the location specified in the application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked by the Auditor as herein provided]. *If it is a license for a community currency exchange, the same shall be valid only at the place of business specified in the application. If it is a license for an ambulatory currency exchange, it shall entitle the applicant to operate only at the location or locations specified in the application, provided the applicant shall secure separate and additional licenses for each of such locations. Such licenses shall remain in full force and effect until they are surrendered by the licensee, or revoked, or expire, as herein provided.* If the Auditor shall not so [find] *approve,* he shall not issue such license *or licenses* and shall notify the applicant of such denial, retaining the [twenty-five dollars ($25.00)] *$25.00* investigation fee to cover the cost of investigating

the applicant. The Auditor shall approve or deny every application hereunder within [the thirty (30)] *ninety* days from the filing thereof; *except that in respect to an application by an approved ambulatory currency exchange for a license with regard to a particular location to be served by it, the same shall be approved or denied within twenty days from the filing thereof.*

No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the Auditor shall, within twenty [(20)] days thereafter prepare and keep on file in his office a written order of denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and shall send by the United States mail a copy thereof to the applicant at the address set forth in the application, within [(5)] days after the filing of such order. A review of any such decision may be had as provided in Section [22] *22.01* of this Act.

Sec. 11. Such license, *if issued for a community currency exchange,* shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. *If issued for an ambulatory currency exchange, it shall so state, and shall state the name and office address of the licensee, and the name and address of the location or locations to be served by the licensee, and shall not be transferable and assignable.*

Sec. 14. Every licensee, shall, on or before [December 1] *November 15,* pay to the Auditor the [sum of fifty dollars ($50.00) as an] annual license fee *or fees* for the next succeeding calendar year and shall at the same time file with the Auditor *the annual report required by Section*

16 of this Act, and the annual bond *or bonds,* and *the* insurance policy or policies [in the same amount and of the same character] as *and if* required by [Sections 5 and 6 of] this Act. *The annual license fee for each community currency exchange shall be $50.00. The annual license fee for each location served by an ambulatory currency exchange shall be $10.00.*

Sec. 15. The Auditor may, upon ten [(10)] days notice to the licensee by United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the required bond *or bonds* or insurance policy or policies or to comply with any order, decision, or finding of the Auditor made pursuant to this Act; or that

(b) The licensee has violated any provision of this Act or any regulation or direction by the Auditor under this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Auditor in refusing the issuance of the license.

The Auditor may revoke only the particular license *or licenses for particular places of business or locations* with respect to which grounds for revocation may occur or exist, or if he shall find that such grounds for revocation are of general application to all [offices] *places of business or locations,* or to more than one [office] *place of business or location* operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply, as the case may be.

A licensee may surrender any license by delivering to the Auditor written notice that he, *they or it* thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on his, *their or its* bond *or bonds, or his, their or its policy or policies of insurance, required by this Act,* or entitle such licensee to a return of any part of the annual license fee *or fees.*

Every license issued hereunder shall remain in force until the same *shall expire, or* shall have been surrendered or revoked in accordance with this Act, but the Auditor may on his own motion, issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Auditor in refusing originally the issuance of such license under this Act.

No license shall be revoked until the license has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Auditor shall within twenty [(20)] days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five [(5)] days after the filing in his office of such order, finding or decision. A review of any such order, finding or decision may be had as provided in Section [22] *22.01* of this Act.

Sec. 16. Each licensee shall annually, on or before the fifteenth day of [February] *November*, file a report with the Auditor *for the fiscal year period from October 1st through September 30th* (which shall be used only for the official purposes of the Auditor) giving such relevant information as the Auditor may reasonably require concern-

ing, and for the purpose of examining, the business and operations during the preceding [calendar] *fiscal* year period of each licensed [place of business] *currency exchange* conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Auditor and the Auditor may at any time and *shall* at least once in each year investigate the [community] currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a [community] currency exchange. For that purpose, the Auditor shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporation and to the officers and directors thereof that shall relate to such [community] currency exchange business. *The Auditor may at any time, and shall at least once a year, inspect the locations served by an ambulatory currency exchange, for the purpose of determining whether such currency exchange is complying with the provisions of this Act at each location served.* The Auditor may require *by subpoena* the attendance of and examine under oath all persons whose testimony he may require relative to such business, and in such cases the Auditor, or any qualified representative of the Auditor whom the Auditor may designate, may administer oaths to all such persons called as witnesses, and the Auditor, or any such qualified representative of the Auditor, may conduct such examinations, and there shall be paid to the Auditor for each such examination a fee of [twenty dollars ($20.00)] *$20.00* for each day or part thereof *for each qualified representative designated and* required to conduct the examination; *provided, however, that in the case of an ambulatory currency exchange, such fee shall not be increased by reason of the number of locations served by it.*

Sec. 18. The applicant *for a community currency exchange license* shall have a permanent address as evidenced by a lease of at least six [(6)] months duration or other suitable evidence of permanency, and the license issued, pursuant to the application shall be valid only at that address or any new address approved by the Auditor.

Sec. 19.1. Whenever an ambulatory currency exchange shall be actively engaged at any place or station on a location licensed under this Act in the cashing of checks other than from within an armored vehicle, such currency exchange shall provide at least one armed guard at each such place or station in addition to the person or persons cashing checks.

Sec. 19.2. Before any license or renewal of license shall be issued for any location served by an ambulatory currency exchange, the applicant thereof shall file with and have approved by the Auditor a surety bond for each such location, issued by a bonding or insurance company, licensed to do business in this State, in the penal sum of $2,000.00. The bond shall be conditioned that the licensee serving the location shall comply with Section 19.1 of this Act and shall pay all lawful claims for money or other property loss, or bodily injury, suffered in the course and by reason of a holdup at such location, that shall occur at the time or times when said licensee failed to comply with said Section 19.1. Such bond shall run to the Auditor and shall inure to the benefit of any person or persons who shall establish a lawful claim or claims as aforesaid. The applicant shall have the right, at his, their, or its option, to file in lieu of the bond or bonds required by this section, a blanket surety bond, which he, they, or it shall have approved by the Auditor, issued by a bonding or insurance company, licensed to do business in this State, covering all

the locations served and to be served by such applicant, in a penal sum of not to exceed $100,000.00, conditioned and payable as aforesaid, and specifying that the liability thereunder for each location shall be limited to $2,000.00.

Sec. 28. Unless an ambulatory currency exchange shall engage in the business of selling or issuing money orders under his, their or its name, or any money orders other than those excepted in Section 1 of this Act, Sections 5, 6 and 7 of this Act shall not be applicable to it. Otherwise, said sections shall apply to it, if it shall engage in such business.

Sec. 29. The operation of any unlicensed community or ambulatory currency exchange, or the unlawful conduct or operation of any licensed community or ambulatory currency exchange, is hereby declared to constitute unfair competition with licensed and legally operated currency exchanges doing business in the same community. Any licensee operating legally under this Act in the same community shall have the right to apply to any court of competent jurisdiction for and obtain an injunction restraining such unfair competition.

Sec. 30. If any part or provision of this Act shall be declared unconstitutional, the unconstitutionality of such part or provision shall not invalidate the constitutional provisions of this Act.

Sec. 2. The title of said Act is amended to read as follows:

"An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof".